



CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A. No. 060/00672/2017

(Order reserved on 05.01.2021)

Chandigarh, this the 12th day of January, 2021

HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

1. Pardeep Sundriyal (aged 19 years) S/o Late Sh. Dharma Dutt, (Ex. ALM) resident of House No. 1036A, Sector-28B, Chandigarh.
2. Preeti Sundriyal (aged 19 years) D/o Late Sh. Dharma Dutt, (Ex. ALM) resident of House No. 1036A, Sector-28B, Chandigarh.
3. Smt. Bhagirathi Devi (aged about 85 years) widow of Late Sh. Amar Dutt and mother of late Sh. Dharma Dutt, (Ex. ALM) resident of House No. 1036A, Sector-28B, Chandigarh.
4. Smt. Deepa (aged 46 years) widow of late Sh. Dharma Dutt (Ex. ALM), resident of House No. 1036A, Sector-28B, Chandigarh.

.....Applicants

(By Advocate: Mr. Sandeep Siwatch)



Versus

1. Union of India through its Secretary to Government, Parliament Street, New Delhi.
2. Union Territory Chandigarh through Secretary Department of Electricity, Chandigarh.
3. Superintending Engineer, Electricity OP Division No. 1, UT, Sector-17E, Chandigarh.
4. Addl. Superintending Engineer, Electricity, OP Division No. 1 UT, Sector-17E, Chandigarh.
5. Accountant General (A&E), UT, Chandigarh, Sub Office Chandigarh-17.
6. Smt. Kamla Devi Sundriyal, widow of late Sh. Dharma Dutt, now residing in village Noilu, Post Office Chamnow District Pouri, Garhwal (Uttarakhand).

.....Respondents

(By Advocate: None for respdt. No.1

Mr. Rajesh Punj for respdts. No.2-4

Mr. G.S. Sidhu proxy counsel for Sh.

I.S. Sidhu for respdt. No.5

Mr. Parmod K. Sharma for respdt. No.6)



ORDER

AJANTA DAYALAN, Member (A):

1. This present OA has been filed by the applicants Pardeep Sundriyal, his sister Preeti Sundriyal, his grandmother Bhagirathi Devi and Deepa, seeking payment of retiral benefits including GPF, undisbursed salary, gratuity, leave encashment and commutation of the deceased Dharma Dutt subsequent to his death on 22.10.2014. They have also sought continuation of Government accommodation No. 1036A, Sector-28B, Chandigarh in favour of the applicants as an interim measure.

2. The basic facts of the case are not in dispute. Dharma Dutt, father of the applicants No. 1 and 2 was employed as ALM in Electricity Department in UT Chandigarh and died on 22.10.2014. He left behind applicants No. 1 and 2 who are his twin children and his mother Bhagirathi Devi. He also left behind Kamla Devi, who is his wife as per official records. Besides, he also left behind one Deepa who is applicant No. 4 in the present OA and who also claims to be the widow of the deceased Government servant Dharma Dutt.



3. As per pleadings made by the applicants, after birth of applicants No. 1 & 2 in 1993 from respondent No. 6, that is, Kamla Devi, Kamla Devi “suffered mental sickness and she voluntarily separated from late Dharma Dutt”. This was done amicably with the consent of the family members and was reduced to writing on 11.12.1995. The applicants further pleaded in the OA that this was as per custom in the family in District Garhwal whereby a spouse could separate amicably without seeking decree of divorce. They have further stated that Dharma Dutt continued paying Kamla Devi maintenance for her basic needs. At time of separation, the applicants No. 1 & 2 were not more than 7-8 years old and hence, Dharma Dutt married Deepa who is applicant No. 4 to bring up children. They have also claimed that marriage of Dharma Dutt with Deepa was solemnized in the year 2005 and thereafter Deepa and Dharma Dutt lived together. In support of their contentions, they have produced school certificate, Aadhar Cards and LIC Policy. However, Dharma Dutt expired in 2014 giving rise to dispute regarding pensionary benefits.



4. In the OA, the applicants have admitted that Deepa is second wife and the respondent No. 6 is the first wife and Deepa is claiming her right for pension alongwith applicants No. 1, 2 and 3. They have also stated that they do not dispute the claim of respondent No. 6, that is Kamla Devi to share pension and retiral benefits with applicants in equal share and do not dispute her status as such.

5. The applicants have further stated that Kamla Devi separated voluntarily and started living with her parents in Garhwal District. She did not perform her matrimonial duties. It was to bring up minor children that Kamla Devi herself accepted the marriage of Dharma Dutt with Deepa. Photographs of marriage have been annexed as proof at Annexures A-6 and A-7.

6. It is also averred by the applicants that Dharma Dutt had made Deepa his nominee in Life Insurance Policy (Annexure A-14) and the assured amount has become payable to applicant No. 4.

7. Further, it is averred that applicant No. 4, Deepa sincerely acted as real mother of applicants No. 1 and 2 and did not opt for another child through Dharma Dutt and that she is bringing up applicants No.



1 and 2 and is also taking care of old mother of Dharma Dutt. Copies of Aadhar Card indicating residence of applicants No. 1, 2 and 4 with Dharma Dutt at his House No. 1036A, Sector-28B, Chandigarh have been annexed as Annexures A-8 to A-10.

8. The applicants have also annexed settlement of late Dharma Dutt with his first wife Kamla Devi at Annexures A-11 and A-12 in support of their contentions.

9. Further, the applicants stated that during life of Dharma Dutt, Kamla Devi never came forward and only after his death, she is claiming herself to be sole legal heir. However, the applicants have claimed that the first class legal heir of the deceased Dharma Dutt also include his aged mother, his daughter and son as well as applicant No. 4, that is, Deepa besides respondent No. 6, that is, Kamla Devi.

10. The applicants have also stated that when they approached respondents, respondents No. 3 & 4 stated that only Kamla Devi is entitled to entire retiral benefits. According to applicants, this is illegal and unjust and the retiral benefits need to be shared amongst all the first class legal heirs. They have,



therefore, prayed that respondents cannot determine the share of legacy till final decision in the present case and the action of respondent No. 5 in proceeding to pay the entire amount to Kamla Devi is illegal.

11. Finally, the applicants have also prayed that they be not dispossessed of Government accommodation No. 1036A, Sector-28B, Chandigarh, by way of interim relief.

12. The official respondents have submitted their written statement. Besides, Kamla Devi has also submitted a separate written statement. Both have contested the claim of the applicants.

13. The official respondents have stated that official records maintained by the respondents in respect of the deceased clearly show the nomination of his first wife, namely, Kamla Devi. They have also categorically stated that no record is available in the office of the answering respondents to show applicant No. 4 as wife of the deceased. They have also attached copy of nomination form at Annexure R-1.

14. Further, the official respondents have stated that as per Hindu Marriage Act, second marriage is debarred during the subsistence of first marriage and



neither party should have a spouse living at the time of second marriage. As no divorce was granted by competent court, applicant No. 4, that is, Deepa cannot be said to be legally wedded wife of the deceased Dharma Dutt.

15. The respondents have also pointed out that the applicants are pleading differently in their earlier OA No. 965/2016 and in the present OA. In the earlier OA, they have shown family settlement to have been executed in writing on 11.12.1995. In that case, the deceased and Kamla Devi separated at that time. However, the twin children Pardeep and Preeti, i.e. applicants No. 1 and 2 who are said to be the children from the wedlock of the deceased and Kamla Devi, were born on 03.08.1997 as per their date of birth mentioned at Annexures A-3 and A-4. These facts raise doubts about the conduct of applicants.

16. The respondents have also averred that even though the applicants have made a prayer for retaining Government accommodation, Secretary, House Allotment Committee, who is a necessary party, has not been impleaded.



17. The respondents have further stated that retiral benefits of Dharma Dutt have not been released due to pendency of litigation. Earlier, the applicants filed a civil suit claiming the same relief (Annexure R-2). The Accountant General also vide letter dated 12.03.2015 (Annexure R-3) directed for finalization of retiral dues after decision in the civil suit. Before this, the answering respondents have written letter dated 23.12.2014 to Kamla Devi, asking her to furnish required documents as the official records mention her as nominee (Annexure R-4). Kamla Devi submitted certain details vide letter dated Nil which was received on 12.01.2015 (Annexure R-5). Again, the respondents wrote to Kamla Devi on 30.11.2016 (Annexure R-6) at her last known address to submit the documents afresh so that pensionary benefits can be released. They have also stated that Group Insurance amount, Ex-Gratia and Leave Encashment have already been sanctioned vide letters dated 09.12.2016 (Annexures R-7 to R-9). Vide their letter dated 31.07.2017 (Annexure R-10), the respondents asked Kamla Devi to obtain legal heir certificate from the Deputy Commissioner for releasing service benefits of the deceased. Some documents



were submitted by her. However, family pension case was returned by the respondents on 09.08.2017 (Annexure R-11) with some objections as the name of dependents did not match with the nomination of the deceased as per office record and other reasons.

18. The respondents have not yet released any retiral benefits due to dispute between the applicants and Kamla Devi.

19. Finally, the official respondents have again stated that as per office record, Kamla Devi is the legally wedded wife and a nominee of late Dharma Dutt. Copy of the nomination form has been attached as Annexure R-1. Further, as per Hindu Marriage Act, applicant No. 4 cannot be held to be a legally wedded wife as the second marriage during the subsistence of the first marriage is void ab initio.

20. In view of all above, the official respondents have concluded that OA has no merit and needs to be dismissed.

21. Kamla Devi has also filed a separate written statement sometime in January 2018. She has stated that applicant No. 4, that is, Deepa had malafide intentions to grab the benefits due to Kamla Devi even



though Deepa had no legal authority to file the case. Kamla Devi has also stated that the applicants are misleading the Tribunal. Deepa is not the legal guardian of the children of late Dharma Dutt and Kamla Devi. In fact, she is instigating other applicants and has deprived Kamla Devi of her legal rights. According to her, the OA has been filed only for the purpose of delaying the payment of post-retiral benefits to Kamla Devi. She has also stated that other petitions and applications of the applicants have already been dismissed previously and now they have filed OA before this Tribunal without any locus standi.

22. Kamla Devi has stated that Deepa is not a Class I legal heir of Dharma Dutt. Kamla Devi herself is the only widow. Further, she has not two but three children from wedlock of Dharma Dutt. In fact, Deepa was the cause of family disturbance. She has also concealed the fact that Dharma Dutt had a second son Vivek who is living with Kamla Devi in his matrimonial house in Garhwal. Kamla Devi is the natural guardian to all the three children and hence declaration of Deepa that she is the guardian of applicants No. 1 and 2 is



false. Thus, Deepa has no locus standi to claim retiral benefits.

23. Kamla Devi has also stated that the arguments put forth by the applicants are contradictory. This is because if Kamla Devi was mentally sick, how could she give her consent to the alleged marriage of Dharma Dutt with Deepa. The applicants are only filing false cases against the respondents to deny her of her legal right to retiral benefits of Dharma Dutt being her sole wife and widow.

24. Kamla Devi has also alleged that Deepa has been the cause of desertion of Kamla Devi from her family and children and for last three years, she has been filing fabricated cases before Civil Judge, Chandigarh and then before this Tribunal. Deepa hijacked her two children and did not permit them to meet their mother. She suffered domestic violence and was not allowed to even participate in the customary rituals of her deceased husband when she reached Chandigarh after hearing about his death. Deepa locked her two children who were minor at that time and did not allow them to meet her. As she was alone



in Chandigarh and had lost everything already, she could not do much and returned to her native place.

25. Kamla Devi has also stated that the plea of the applicants that as per custom, Deepa and Dharma Dutt were married, is illogical and the fact that Garhwal has different customs of divorce is also illogical. Garhwal is governed by central law. As the parties and Dharma Dutt are Hindus by birth and they still follow the same religion, they are governed by Hindu Marriage Act, 1956 and the whole story of applicants has been planted to create illegal existence of Deep as legal heir. In fact, she has no legal status as a legal heir.

26. Finally, Kamla Devi has pleaded that the applicants are putting illegal pressure on respondents for not releasing retiral benefits. On the other hand, she needs these retiral benefits for meal and livelihood of herself and her three children. She is presently at the mercy of her brother and she herself has become sick and is undergoing huge mental agony and pain due to inhuman act of applicant No. 4. She has also stated that she is capable of taking care of herself, her children as well as her mother-in-law. She stated that



applicant No. 4 deserves no relief and has no locus standi.

27. I have heard the counsel of both the parties and have also gone through the pleadings. I have also given thoughtful consideration to the entire matter.

28. Some basic facts of the case are not disputed. Kamla Devi is the first wife of Dharma Dutt. Dharma Dutt and Kamla Devi were Hindus and continued to remain Hindus. Applicants No. 1 and 2 and even the third child Vivek are all children of Dharma Dutt and Kamla Devi from their wedlock. Deepa had no child from Dharma Dutt. There was no divorce of Kamla Devi with Dharma Dutt. These facts are not disputed.

29. From the above, I clearly see that Kamla Devi is the first wife of Dharma Dutt. As there was no divorce and she is still alive, the alleged marriage of Dharma Dutt with Deepa is void *ab initio* under Hindu Marriage Act, 1956. Even otherwise, a Government servant cannot marry second time if his first wife is alive and he has not divorced her. Thus, in the instant case, the marriage of Dharma Dutt with Deepa, if at all solemnized, was void *ab initio*. This fact is further



supported by the official records which themselves show Kamla Devi as the wedded wife of Dharma Dutt even till his death. This is further supported by the nomination annexed at Annexure R-1 where Dharma Dutt sometime in the year 1999 has made Kamla Devi as a nominee for GPF. I find that even in the year 1999, Dharma Dutt has nominated Kamla Devi giving the relationship as wife, for receiving his General Provident Fund amount. This fact is further supported by the pleadings of the applicants themselves where they have given no proof of the marriage of Deepa with Dharma Dutt except two photographs. Photographs are definitely not adequate and convincing proof of marriage. Besides, the applicants have tried to support their contention of marriage by a Life Insurance Policy where Dharma Dutt has nominated Deepa (Annexure A-13). However, nomination in LIC cannot be taken as a proof of marriage. Thus, not only the applicants have no proof of marriage, such marriage would be an *ab initio* void marriage in view of law in this regard.

30. I also find pleadings of the applicants themselves contrary. They have stated that Kamla Devi was mentally sick and as such, she left her



children and executed settlement on 11.12.1995. If Kamla Devi was mentally sick, she would not be capable of executing a settlement. Even otherwise, a settlement which is contrary to law is not enforceable. As this settlement contained her permission for second marriage, this settlement is void on this ground as well. Besides, Kamla Devi has denied having made any such settlement. Also, we find that in the OA, the applicants are pleading differently. At one place in para 4(4) of the OA, the date of settlement is shown as 11.12.1995 whereas in the same para later, the year of marriage is shown as 2005. These obviously do not match and put a doubt on pleadings made by the applicants. Besides, if the settlement took place in 1995, how could the children Pardeep and Preeti be born in 1997 as indicated in their school certificates appended as Annexures A-3 and A-4? These facts are also against the basic contentions in the OA made by the applicants themselves that Deepa made settlement with Dharma Dutt to take care of small children.

31. During arguments, I also inquired whether applicants have any proof that Dharma Dutt was making payment to Kamla Devi for her maintenance as



per agreement, they admitted that they had no such proof.

32. In view of all above, I am of clear view that Dharma Dutt had only one legally wedded wife, that is, Kamla Devi. All the children are of Dharma Dutt and Kamla Devi.

33. I have observed that even though Dharma Dutt died in 2014, no retiral benefits have been paid to Kamla Devi as yet. Even family pension has not been paid to her till now. The delay in payment is said to be because of various suits filed by the applicants. Firstly, the applicants went to civil court in January 2015. This case was dismissed as withdrawn in August 2016 with liberty to seek relief in the Central Administrative Tribunal (Annexure A-1). An OA was filed in CAT in 2016 which was dismissed as withdrawn with liberty to file fresh OA on 24.05.2017 (Annexure A-1/A). Thereafter, this OA has been filed in June 2017 and is continuing since then.

34. I have gone through the pleadings very carefully. What I fail to understand is how family pension has been denied to a legally wedded wife for last six years on some ground or the other and based



on frivolous pleas made by the applicants. Family pension is clearly payable to the widow. Only after her death, the children can claim family pension if they are otherwise eligible for it. In such circumstances, how family pension has not been paid to the widow, is not understood at all. It indicates a very callous attitude and limited understanding of the respondents in appreciating the clear position of the rules and facts of the case. It shows that the respondents are not doing their duty properly. Frivolous claims in clear contravention of rules, especially of family pension, should not be the reason to delay the rightful claim of the widow. As per rules, family pension is not sharable except in unusual circumstances. It is payable to one family member at a time and on his/her death, the family pension passes to other eligible member(s). When legally wedded widow is surviving, there is no question of payment of family pension to children or to mother of the deceased. The children can claim pension only after death of Kamla Devi. Hence, family pension and arrears in this regard require to be paid to Kamla Devi immediately. Even otherwise, children were



minor at the time of death of the Government employee Dharam Dutt.

35. Similar is the position with regard to GPF. When a clear nomination in the name of Kamla Devi is existing, it is not understood why even this payment has been delayed. I find from a perusal of Annexure R-1 that Dharma Dutt has made this nomination in 1999 in favour of Kamla Devi. Share is clearly shown as 100%. The contingencies on which nomination was to become invalid are legal separation or divorce, which has obviously not happened in this case. The names of Pardeep and Preeti are there but only as a second nominee, that is, in the event of Kamla Devi pre-deceasing the subscriber or on happening of the contingencies specified in the previous column. Thus, GPF claim of Kamla Devi was also clearly beyond any doubt or dispute. I fail to understand that even such a clear claim in favour of respondent No. 6, that is, the widow of Dharma Dutt, has not been settled for last six years. GPF balance now needs to be paid to Kamla Devi immediately.

36. There are three other payments, namely Group Insurance Scheme amounting to Rs. 30,000/-



Ex-Gratia payment of Rs. 1 lakh and Leave Encashment of Rs. 2,16,267/- which have already been sanctioned way back on 09.12.2016 (Annexures R-7 to R-9) by the respondent department. All these sanctions are in name of Kamla Devi. There is no specific mention in the pleadings specifically about nomination in regard to these dues. I believe that these sanctions would have been issued after due examination of provision of rules and the law as well as nominations, if any, made by the deceased for these dues. If so, these sanctions may be acted upon now, also keeping in view the fact that Kamla Devi is the natural guardian of applicants No. 1 and 2 and at the time of death of Dharma Dutt in October 2014, both applicants No. 1 and 2 were minor. This is as per the pleadings of the applicants themselves in the OA where their date of birth has been shown as 03.08.1997 (Annexures A-3 and A-4) and date of death of Dharam Dutt is 22.10.2014.

37. As regards accommodation, firstly I note that this prayer has been made by applicants in the interim prayer portion only. No relief in this regard has been sought in the main prayer. Besides, Secretary, House Allotment Committee, being necessary party has not



been impleaded in this case by the applicants. I also observe that as per rules on house allotment in case of death, the family can be allowed to stay in the allotted Government accommodation maximum for three years at normal rent and two more years at five times the normal rent (Annexure R-12). This period is already over. As such, no orders in this regard are being passed.

38. In view of all above, the OA does not have any merit. In fact, it is only delaying the rightful claim of respondent No. 6, that is, legally wedded wife of Dharma Dutt. The family pension and arrears thereof and GPF balance of Dharma Dutt, as discussed above, need to be paid to the widow Kamla Devi now without further delay. The respondents are directed to make these payments within one month from the date of receipt of a certified copy of this order.

39. With the above direction, the OA is disposed of. However, there shall be no order as to costs.

(Ajanta Dayalan)
Member (A)

Place: Chandigarh

Dated: January 12th, 2021
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